COURT NO.3

Criminal Revision no.1106 of 1991- old number.
No.724 of 2001- new number

Rajendra Kumar Joshi ----------Revisionist
Versus

1.Chandra Lal Shah Thuldharia
2. State of Uttaranchal ----------Respondents

Hon'ble Irshad Hussain.J.

Heard Sri I.P.Gairola, counsel for the revisionist and A.G.A. The private respondent no.1 has been personally served but is absent.

This is a revision against the judgment and order dated 19.07.1991 passed by the Ist Additional Sessions Judge, Nainital, whereby the revision filed by the accused was allowed and the summoning order passed by the Chief Judicial Magistrate, Nainital on 4.12.90 was set aside on the ground that the mandatory notice as required under Para © of section 138 of the Negotiable Instrument Act, was not sent by the complainant alleging that the cheque given by the accused was bounced off when presented to the drawee bank. Since, with the revision petition the required documents, which have been annexed to the affidavit of the revisionist, are available, there is no need to summon the records of the courts below for perusal. Having heard, it is evident that the complainant has made categorical assertions in the written complaint that the notice as required under the law was sent on 5.7.1990. It is of significance that the reply of the notice was given by the accused-respondent on 19/23.7.1990, copy of which is annexure 4 to the revision petition. Considering the allegation regarding notice made in the written complaint it could safely be assumed that the learned Magistrate, while taking cognizance and issuing summoning order on 4.12.1990, it had taken note of the said notice. It appears that this fact was not noticed or brought to

the notice of the learned Sessions Judge when the revision was heard and decided on merits. Since the required notice was sent and reply of which was also given by the accused-respondent, the impugned judgment and order clearly suffers from vice of impropriety and the same deserves to be set-aside.

For the above reasons and discussions, the revision is allowed and the impugned judgment and order dated 30.07.1991 passed by the I Additional Sessions Judge, Nainital in criminal revision no.5 of 1991 is set aside.

(Irshad Hussain, J.)

September 12, 2002
MPS